

MARY SANTELLI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 97 C 5702
	)	
ELECTRO-MOTIVE DIVISION OF	)	
GENERAL MOTORS CORP.,	)	
	)	
Defendant.	)	

Date: September 7, 2001

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation is entitled to the same fair consideration as a private individual. All persons and corporations stand equal before the law and are to be dealt with as equals in a court of justice.

As I stated, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between the parties that certain facts are true.

The evidence also includes certain responses by EMD to “requests for admission” made by Santelli—that is, admissions by EMD that certain facts are true. A party is bound by its responses to requests for admission.

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the evidence in the case. However, the charts or summaries are not themselves evidence or proof of any facts. If you do not believe that they correctly reflect the evidence in the case, you should disregard them. You may, however, consider them if you believe that they accurately reflect the evidence.

Certain things are not evidence, I will list them for you.

First, any testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, or in other words, it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.



You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness' memory;
- the witness' intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness' manner while testifying;
- the reasonableness of the witness' testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness testimony in whole, in part, or not at all, and how much weight to give to that testimony.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

A corporation can only act through its employees, agents, directors, or officers.

Therefore, a corporation is responsible for the acts of its employees, agents, directors and officers performed within the scope of their authority.

In a civil lawsuit like this one, the burden is on the Plaintiff to prove every essential element of his or her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the Plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Title VII of the Civil Rights Act of 1964, as later amended by Congress, makes it unlawful for an employer to discriminate against an employee in the terms and conditions of her employment because of her gender.

The plaintiff, Mary Santelli, claims that the defendant, Electro-Motive Division (EMD), discriminated against her by removing her from the W51 welding classification because of her gender.

EMD denies that it removed Santelli from the W51 welding classification because of her gender.

Santelli has the burden of proving that EMD intentionally discriminated against her because of her gender.

In order to prevail on her claim against EMD, Santelli must prove each of the following propositions by a preponderance of the evidence:

1. that her gender was a motivating factor in EMD's decision to transfer her out of the W51 welding classification; and
2. that she was damaged as a result of EMD's decision.

If you find from your consideration of all the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find in favor of Santelli.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then you must find in favor of EMD.



When I say that Santelli must prove that her gender was a motivating factor in EMD's decision to transfer her out of the W51 welding classification, I mean that she must show that her gender contributed to EMD's decision in a substantial way, or to put it another way, that EMD would not have transferred her from the W51 welding classification if she had been a man, and everything else was the same. Santelli is not, however, required to prove that her gender was the sole motivation or even the primary motivation for EMD's decision.

You are not to be concerned with whether EMD's decision was wise, reasonable, or fair, and you may not substitute your own views of good business judgment for those of EMD. Rather, your concern is solely with whether Santelli's gender was a motivating factor in EMD's decision.

The law does not require an employer to maintain different sets of standards or different expectations for male and female employees, or to accommodate an employee because of his or her gender.

The fact that Santelli is a woman is not, in and of itself, evidence of discrimination.

Santelli contends that she was treated less favorably than male welders who she claims were similarly situated to her. It is up to you to decide whether these male welders were actually similarly situated to Santelli and whether they were actually treated more favorably than Santelli.

If you decide that Santelli has proven her claim against EMD, you must determine what amount of damages, if any, EMD has caused to Santelli. You should not interpret the fact that I am giving you instructions about damages as an indication in any way that I believe that Santelli should, or should not, win this case. It is up to you to decide that question. I am instructing you on damages only so that you will have guidance in the event that you decide that Santelli has proven her claim and is entitled to recover money from EMD.

Santelli has the burden of proving her damages to a reasonable degree of certainty. You may not award damages based on sympathy, speculation, or guesswork. On the other hand, the law does not require Santelli to prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

In determining the amount of damages that you decide to award, you should be guided by dispassionate common sense. You must use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence.

If you find that Santelli has failed to prove that she suffered any actual damages as defined in these instructions, you may award her nominal damages in the amount of one dollar (\$1).

The only adverse employment action that Santelli is challenging in this case is her removal from the W51 welding classification. You may not award her damages resulting from any other employment decision made by EMD.

In this case, Santelli is claiming damages for back pay. I will now define this type of damages.

### Back pay

You may award Santelli as damages an amount that reasonably compensates her for any lost wages resulting from her removal from the W51 welding classification, taking into consideration any increases in salary that Santelli would have received had she not been removed from that classification. This is referred to as “back pay.” The purpose of back pay is to make the plaintiff whole for any wages that she lost as a result of a discriminatory employment decision.



### Duty to mitigate damages

A plaintiff is required to make every reasonable effort to minimize her damages. This is called the duty to mitigate damages.

EMD contends that Santelli failed to mitigate her damages by failing to re-apply for the W51 welding classification after her removal. EMD has the burden of proving that Santelli failed to mitigate her damages.

If you find that Santelli failed to mitigate her damages, you must reduce her damages by the amount that you find she could have avoided by using reasonable efforts from the time of the discrimination through the time of this trial.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you.

[Explanation of verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in case.

## VERDICT FORM

We, the jury, unanimously find in favor of (CHECK ONE):

\_\_\_\_\_ Mary Santelli

\_\_\_\_\_ Electro-Motive Division of General Motors Corp.

(If you checked Mary Santelli, proceed to the next question. If you checked Electro-Motive Division, do not answer any more questions, and sign and date this form)

We unanimously award Mary Santelli back pay in the following amount:

\$ \_\_\_\_\_

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Foreperson

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Date: \_\_\_\_\_, 2001